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ALJ

SERVICE DATE – AUGUST 24, 2016

SURFACE TRANSPORTATION BOARD

ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION TO COMPEL DISCOVERY
RESPONSES

Docket No. FD 35981

FINCH PAPER LLC—PETITION FOR DECLARATORY ORDER

Decided: August 23, 2016

Finch Paper LLC (Finch) filed a motion to compel discovery responses from Delaware and Hudson Railway Company d/b/a Canadian Pacific (CP) on July 1, 2016. Specifically, the motion seeks to compel full CP responses to Document Request No. 30 included in Finch's February 18, 2016 First Set of Discovery Requests, as well as to Interrogatory Nos. 15, 16, 17, 18, 19 and Document Request Nos. 40, 41, 42 and 44 included in Finch's April 11, 2016 Second Set of Discovery Requests.

CP generally objects to the specified document requests and interrogatories on the grounds that they all are irrelevant, overbroad and unduly burdensome. CP also objects that the discovery requests at issue are untimely and would require CP to conduct "a costly and burdensome special study".

Board regulations permit discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding. . . ." The Board determines relevance in accordance with the Federal Rules of Evidence. Finch therefore may request from CP any information or document(s) having any tendency to make any fact of consequence to the Board's final determination in this proceeding more or less probable than it would be without the information or document(s). Each of the discovery requests at issue satisfies this broad standard.

Moreover, in accepting the motion to compel, the Board's August 15, 2016 Decision specifically relied on determinations that (i) discovery was ongoing throughout the relevant period and (ii) resolution of the underlying discovery dispute should not unduly delay the proceeding. Any CP objection that the discovery requests at issue are untimely are inconsistent with these determinations and are rejected on that basis. In addition, careful review of the discovery requests reveals no request or need for any special CP study. The requests seek whatever responsive information and documents CP has, and in whatever form CP has the information/documents. CP is not required to conduct any special study to satisfy the requests, but CP is required to provide any responsive information and documents CP already may have.

It is ordered:

1. The motion to compel is granted in its entirety.

By the Board, H. Peter Young, Administrative Law Judge.